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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1162

FEDERAL POWER COMMISSION, *Petitioner*

v.

NEW ENGLAND POWER COMPANY, *et al.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a)[1] is reported at 467 F.2d 425. The initial order (No. 427) of the Federal Power Commission (FPC)

[1] "Pet. App." refers to the Appendix to the Petition filed in this case by the Federal Power Commission.

(R. 87-114) and its order denying rehearing (R. 144-151) are reported at 45 FPC 440 and 45 FPC 964, respectively.

JURISDICTION

The judgment of the court of appeals was entered on August 15, 1972 (Pet. App. 14a-15a), and the FPC's petition for rehearing was denied on September 25, 1972 (Pet. App. 16a-17a). The petition for a writ of certiorari was filed on February 22, 1973, and was granted on May 14, 1973 (R. 153). —— U.S. ——. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1), Section 313(b) of the Federal Power Act, 16 U.S.C. 825l(b), and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

QUESTION PRESENTED

Whether the FPC's activities (1) in discharging the accounting and rate regulation responsibilities imposed upon it by the Natural Gas Act over pipeline companies selling natural gas for resale in interstate commerce and (2) in processing applications filed by producers of natural gas for authorization to sell gas to such pipeline companies, result in "things of value or utility" to such pipeline companies [2] within Title V of the Independent Offices Appropriations Act, 1952, so as to authorize the FPC to recover the costs incurred by it in discharging these responsibilities through the assess-

[2] The FPC also brings before the Court a comparable question with regard to certain annual charges which it undertook to assess against electric utilities subject to regulation under the Federal Power Act, 16 U.S.C. 791, *et seq.* This question is treated in the separate brief being filed by respondent, New England Power Company.

ment of annual charges against such pipeline companies.[2]

STATUTE INVOLVED

Title V of the Independent Offices Appropriations Act of 1952, 65 Stat. 290, 31 U.S.C. 483a, provides:

> "It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts: *Provided,* That nothing contained in this section

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[2] The question as stated in the FPC's brief (at p. 2) assumes that these FPC activities result in specific benefits to the pipeline companies within Title V. As indicated in the Question Presented set out in the text, that assumption is improper since it assumes the answer to the actual question involved.

shall repeal or modify existing statutes prohibiting the collection, fixing the amount, or directing the disposition of any fee, charge or price: *Provided further,* That nothing contained in this section shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge or price, but this proviso shall not restrict the redetermination or recalculation in accordance with the prescribed bases of the amount of any such fee, charge or price."

STATEMENT OF FACTS

By Notice of Proposed Rulemaking issued November 5, 1970 (R. 1-16), the FPC proposed to assess a "general annual charge" against all natural gas pipeline companies with annual gas operating revenues in excess of $1,000,000 subject to its jurisdiction under the Natural Gas Act.[4] This charge was designed to reimburse the FPC for its costs of regulating pipeline wholesale rates under that Act. The amount of the charges to be assessed each year against each pipeline company was to be determined by subtracting the amounts collected by the FPC in filing fees specified in a separate schedule [5] from its total costs of administering its natural gas pipeline programs under the Natural

[4] Respondent, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., is a natural gas pipeline company subject to FPC regulation under the Natural Gas Act and has the requisite revenues.

[5] The FPC had earlier prescribed a specific schedule of fees in connection with the filing by pipelines of applications for various licenses, permits and sanctions required under the Natural Gas Act. (See Sections 159.1 and 159.2 of the FPC's Regulations Under the Natural Gas Act, originally adopted by Order 317 issued on January 5, 1966, 35 F.P.C. 30, 392, (1966). Its Notice of Proposed Rulemaking also proposed to increase these fees (See R. 14-15). There is no question here as to the validity of these fees either as originally adopted or as here increased by the FPC.

Gas Act in that year and assessing the remainder among the pipeline companies in proportion to their total deliveries of natural gas in interstate commerce in that year.

By this Notice, the FPC also proposed to assess an "added reserve fee" against each pipeline company which was "required to file an Annual Report—Total Gas Supply on FPC Form No. 15" (R. 16). This fee was to be based on "one-tenth (1/10) of a mill for each Mcf of new reserves certificated during the year covered by said report as shown for item 14 of such form." (R. 16).

Citing Title V of the Independent Offices Appropriations Act, 1952 (*supra* pp. 3-4) and Bureau of the Budget Circular A-25 (Appendix, *infra,* pp. 54-59)[6] as authority for these proposed charges, the FPC's Notice explained its reasoning underlying the proposed general annual charge as follows (R. 5):

> "The remaining costs [after deduction of the filing fees] of carrying out the functions of our pipeline programs have not heretofore been made subject to any charges. In the main, those functions relate to our activities in passing upon pipeline rate filings."

With regard to the "added reserves fee", the FPC observed (R. 5):

> "We also propose to adopt a fee schedule which will return to the Treasury the costs of the pro-

[6] Circular A-25 is dated September 23, 1959 and was issued by the Bureau of the Budget pursuant to Title V's directive that steps be taken to assure that the fees assessed under that Title by the various Government agencies "be as uniform as practicable and subject to such policies as the President may prescribe." See *supra,* p. 4. For the convenience of the Court, Circular A-25 is reproduced in its entirety in the Appendix.

> ducer certificate program based upon the annual commitments of new reserves to the pipelines for interstate deliveries. For reasons of administrative convenience these charges would be paid by the pipelines on the basis of new reserves reported as certificated during each reporting period."

Following the submission of written comments by interested industry associations and companies including Tennessee, the FPC, on March 18, 1971, issued Order No. 427 adopting the annual charges here under review with several modifications not now relevant.[7] Holding that the assessment of these charges came within its authority under Title V of the 1952 Appropriations Act and Budget Circular A-25, the FPC stated (R. 97-98):

> "We recognize that the exercise of our responsibilities in preventing the imposition of rates and charges which are unjust and unreasonable or preferential and prejudicial has provided continuing benefit to consumers, but our actions in this respect have redounded to the benefit of both industries by creating the economic climate for greater usage of the services of the regulated companies which in turn have further strengthened their financial stability and their ability to sell debt and equity securities required for capital additions to meet ever-increasing demands."

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[7] Among these modifications was a change in the basis for determining each pipeline's share of the total to be recouped by the general annual charge. The FPC had originally proposed the allocation on the basis of each company's *total interstate deliveries* In Order No. 427, however, it proposed to make the allocation on the basis of each company's *total jurisdictional deliveries*. This change had the effect of unreasonably and arbitrarily imposing a greater proportion of these costs upon these pipelines, such as Tennessee, the bulk of whose natural gas pipeline business is for resale rather than for direct use or consumption.

Accordingly, the FPC promulgated, as part of its schedule of fees and charges to be paid by natural-gas companies contained in Part 159 of its Regulations Under the Natural Gas Act, a new Section 159.2a reading in pertinent part as follows (R. 108-109):

"§ 159.2a Annual Charges.

"Reasonable annual charges will be assessed by the Commission against natural gas companies to reimburse the United States for costs of administration of the Natural Gas Act, as hereinafter provided:

"(a) A determination shall be made for each fiscal year of the costs of administration of the Commission's natural gas pipeline programs from which shall be deducted the amounts received during the same period pursuant to the provisions of §§ 159.1 and 159.2 of this Part. The difference shall constitute the adjusted costs of administration of such programs for such period.

"(1) The adjusted costs of administration determined under paragraph (a) of this section shall be assessed against each Class A and Class B natural gas company in the proportion that the total jurisdictional gas deliveries of such natural gas company in the calendar year terminating in such fiscal period bear the sum of the jurisdictional gas deliveries of all Class A and B natural gas companies for the like period.

"(b) In addition to the annual charges prescribed by paragraph (a) of this section, each natural gas company required to file an Annual Report—Total Gas Supply on FPC Form No. 15 shall be assessed one-tenth (1/10) of a mill for each Mcf of new reserves certificated during the year covered by said report as shown for item 14 of such form."

Thereafter, applications for rehearing were filed (R. 120-126, 132-136), claiming, *inter alia*, that the FPC lacked authority to prescribe annual charges designed to reimburse it for its estimated annual costs of pipeline rate regulation. In this regard, it was pointed out that in an earlier proceeding in Docket No. R-282, fixing fees to be paid primarily in connection with the filing of pipeline certificate applications, the FPC had acknowledged its lack of such authority, with the statement:

> "The [FPC] has reviewed its functions under the Federal Power Act and the Natural Gas Act and is of the opinion that the assessment of user charges or other fees with respect to the exercise of our regulatory activities under Parts II and III of the Federal Power Act and under the generally parallel rate and accounting provisions of the Natural Gas Act would not be appropriate *since these activities are primarily for the benefit of the general public rather than the regulated companies.*" (See 30 Fed . Reg. 12077).[8]

However, in its order denying rehearing issued May 14, 1971 (R. 144-151), the FPC dismissed its earlier statement as dictum and held instead that its authority under Title V to assess fees extended to the assessment of the general annual charge since it is

> "* * * predicated on the benefits accorded public utilities and natural gas companies by the creation of regulatory agencies at the federal level and the exercise of the powers delegated to them by the Congress which in our opinion satisfy the statutory requirements for the imposition of these charges." (R. 149)

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[8] Emphasis supplied throughout unless otherwise noted.

Continuing, the FPC reaffirmed its assessment of the added reserve fee against the pipelines, stating (R. 149):

> "* * * The assessment is limited to only one of the various producer programs: the certification of producer sales which plainly benefit pipelines through the [FPC's] control of the initial prices they are required to pay producers for gas purchases. The [FPC's] activities in this connection which provide clear benefits to pipelines through regulatory action include the issuance of temporary certificates to expedite deliveries, the elimination of indefinite price escalation provisions, and the control over the quality of natural gas to be delivered and the length of the period in which supplies may be delivered where advance payments are made by the pipelines."

On appeal, the court of appeals set aside both general annual charge and the added reserve fee. The court pointed out that the FPC's accounting and rate regulation of natural gas pipelines

> "* * * is primarily for the benefit of the public. Their charter statutes require them to so act. The courts have so held (fn. omitted). There is something fundamentally wrong in assessing charges on the basis of benefit to the company when the [FPC] must benefit the public. In the absence of a clear Congressional mandate to the contrary, we conclude that monies for the administration of programs benefitting the general public should come from the general fund of the treasury. We are well aware of the burgeoning administrative expense of operating the Government, however, only Congress can give authority to levy these fees. It has not done so here. (Pet. App. 9a-10a)

Further, the court below noted that the FPC's claim that the pipeline industry had benefited within Budget Circular A-25 by virtue of the creation of a favorable "economic climate"

> "* * * missed the point. The creation of an 'economic climate' is not a special service nor is a particular pipeline or gas company the 'special beneficiary' of such a climate any more than any other pipeline, gas company or the consumer in general. Indeed, under the [FPC's] order petitioners would be liable for the annual assessment despite the fact that they had no proceedings before the [FPC] for that year. In effect, then, the contemplated charges would have no relation to specific services or benefits rendered. The [FPC] must then fall back upon its 'economic climate' argument which is obviously an overly broad benefit particularly in light of the requirement that the charges be for a 'measurable unit of service.'" (Pet. App. 9a)[9]

SUMMARY OF ARGUMENT

I.

The problem here concerns the FPC's authority under Title V of the 1952 Appropriations Act to assess the particular charges here involved, not its authority to assess charges generally. One of these charges is the general annual charge which, *inter alia*, is intended to recoup the FPC's costs of discharging its rate responsibilities under the Natural Gas Act designed to protect the ultimate consumers from excessive rates and which

[9] In so holding, the court of appeals did not reach the further questions as to the propriety of the methods of allocation used by the FPC. Hence, should this Court reverse the court of appeals, the case should be remanded to that court to resolve these additional issues.

is assessed without regard to any specific or identifiable service or benefit to the pipeline or pipeline industry in the year involved, and solely on the basis that the pipeline has the requisite status. The other charge is the added reserve fee which is unique in that it is imposed upon the *pipelines,* although it is designed to recover the FPC's costs of processing applications by producers to sell gas to pipelines, and although, apart from the producers themselves, the ultimate consumers, rather than the pipelines, benefit from these FPC producer activities.

II.

A. The Natural Gas Act vests no fee authority in the FPC. Title V which does grant such authority, contains no provision, comparable to Section 10(e) of the Federal Power Act, 16 U.S.C. 803(e), authorizing the FPC to assess charges to recoup its regulatory costs generally. The charges here involved do not satisfy the requirements of that statute, which on its face permits fees only for (1) the providing of a specific identifiable benefit *i.e.,* "any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate registration or similar theory of value or utility", (2) to specific identifiable persons or entities *i.e.,* to "any person (including groups, associations, organizations, partnerships, corporations or businesses)" as distinguished from the public or even an entire industry generally.

B. Title V's legislative history reaffirms such limited scope. The Senate Committee on Government Operations[10] was of view (1) that fees should be

[10] Formerly the Senate Committee on Expenditures in the Executive Departments.

charged only for services "to special interests to which benefits * * * accrue at the expense of all the taxpayers" (S. Rep. No. 2120, 81st Cong., 2d Sess., p. 1) and (2) in contradiction to the FPC argument (Br. pp. 12-13, 21-25), that "where there is a joint benefit to a particular beneficiary and to all the people * * * and * * * there is doubt as to the degree or preponderance of benefit, there should be no fee" (*Id.* at pp. 3-4). The Committee's example of a situation where fees would be inappropriate (*Id.* at p. 5), closely parallels that here involved since in both the governmental action, while directed at benefiting the public generally, also operated to stimulate confidence in the regulated companies.

Both the report of the House Appropriations Committee which added Title V as a rider to the 1952 Appropriations Act (H. Rep. No. 384, 82d Cong., 1st Sess.), and the comments of Congressman Yates on the House floor (97 Cong. Rec. 4809 (1951), make it clear that the legislation was directed at the imposition of fees provided for "services which [the Government] renders to special beneficiaries". Similarly, the report issued shortly after the enactment of Title V, by the Senate Committee on Government Operations (S. Rep. No. 1467, 84th Cong., 1st Sess.), strongly indicated its satisfaction that Title V adhered to the views earlier expressed by it in S. Rep. No. 2120, *supra.*

C. The administrative interpretation—that of the Bureau of the Budget in Circular A-25, in particular —likewise indicates that the charges here involved are beyond Title V's authorization in at least two respects. First, they are not "to [an] identifiable

recipient for a measurable unit or amount of service or property from which he recovers a special benefit" within Paragraph 3 of Circular A-25. Second, they violate the prohibition of subparagraph 3(a) (2) thereof against charging for services where the "identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefiting broadly the general public."

While Circular A-25 also refers to "business stability" as a basis for assessing fees, it is in the context of specific agency actions directed to identifiable beneficiaries. The favorable "economic climate" which the FPC has allegedly created for the pipeline industry is not the result of any specific FPC action but rather the culmination of the FPC's activities over a period of years, activities which the FPC undertook primarily to benefit the ultimate consumers with the benefits to the pipelines being at most incidental by-products.

Finally, the interpretation of Title V by the FCC and the Fifth Circuit in the *National Cable Television* case, also pending on certiorari is not inconsistent with that of the court below here. The fees there involved do not reflect recovery of costs of FCC rate regulation—the FCC has no jurisdiction over the rate charged by CATV operators. Moreover, both the FCC and the Fifth Circuit recognized that Title V required special identifiable benefits to special beneficiaries. Both also held that such benefits in fact resulted to the CATV operators. Petitioner there is questioning not the requirements of Title V but rather whether in fact the CATV operators received the requisite benefits.

ARGUMENT

As noted, *supra*, the FPC's Order 427 here under review undertakes, *inter alia*, (1) to require most natural gas pipeline companies to pay a general annual charge designed to recoup the costs incurred by the FPC in that year in regulating rates of natural gas pipelines subject to its jurisdiction under the Natural Gas Act and (2) to require most pipeline companies to pay an "added reserve fee" designed to recover the FPC's costs of processing applications filed by producers for authority to sell natural gas to the pipeline companies.

These charges which are thus here involved, are in addition to various other fees assessed by the FPC in connection with specific applications and requests filed by the applicants, as to which there is no question raised here. In other words, the issues here relate to the propriety under Title V of only certain of the charges or fees which the FPC has undertaken to assess; there is no question here as to the FPC's authority to assess fees under Title V generally under appropriate circumstances.

In support of its imposition of the charges which are here in issue, the FPC has asserted, in direct contradiction to its earlier ruling in Docket No. R-282 (*supra* p. 8), that its regulation of the rates of these natural gas pipelines "primarily benefit" these pipeline companies (R. 96) and that, accordingly, since the general annual charge is "predicated on the benefits accorded public utilities and natural gas companies by the creation of regulatory agencies at the federal level," it satisfies "the statutory requirements for the imposition of [such] charges." (R. 149)

The court of appeals disagreed with the FPC and in effect adopted the Commission's earlier ruling by holding that the costs which the charges here involved were designed to recover were incurred by the FPC in the discharge of responsibilities imposed upon it by Congress primarily to benefit the general public and not to confer specific identifiable benefits upon the pipelines which are the subject of that FPC regulation, and hence that the FPC had no authority under Title V to assess these charges.

We show below that the court of appeals was eminently correct in holding that both of the charges here involved are in fact unrelated to any specific identifiable benefits to the pipeline companies as specific identifiable beneficiaries within Title V of the 1952 Appropriations Act and Bureau of Budget Circular A-25.

I.

NEITHER THE GENERAL ANNUAL CHARGE NOR THE ADDED RESERVE FEE IS RELATED TO SPECIFIC IDENTIFIABLE BENEFITS OF WHICH THE PIPELINE COMPANIES ARE SPECIFIC IDENTIFIABLE BENEFICIARIES

In order to put this case in proper focus, it is important at the outset to distingusih between the charges which are here involved and those which are not. Such delineation is, we believe, of particular importance in light of the fact that the instant case has been set for argument in tandem with *National Cable Television Association Inc.* v. *United States,* Sup. Ct. No. 72-948, involving the validity of an annual charge imposed by the Federal Communications Commission (FCC) upon CATV systems, which are subject to regulation by the FCC under the Federal

Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.* See *United States* v. *Southwestern Cable Co.*, 392 U.S. 159 (1968).

A. The General Annual Charge

At the outset, it should be noted that not only does the FPC's Order No. 427 here under review itself characterize the general annual charge as an "annual charge * * * to reimburse the United States for the costs of administration of the Natural Gas Act" (R. 109), but, as that order also recognizes (R. 96-97, 149) that charge was designed primarily to recoup the costs incurred by the Commission in regulating pipeline rates as provided by Congress in the Natural Gas Act.

This is confirmed by the operation of the formula provided in Section 159.2a(a) (R. 109; see *supra* p. 7) for determining that charge. Thus, under that formula the general annual charge is to recover the portion of the total "cost of administration of the Commission's natural gas pipeline programs" left after deducting "the amounts received * * * pursuant to the provisions of §§ 159.1 and 159.2 of this Part." As shown *infra,* Sections 159.1 and 159.2 prescribe filing fees to be paid with applications for various licenses, permits and sanctions which the Natural Gas Act empowers the FPC to issue, including authorizations to expand services or facilities under Section 7 of the Natural Gas Act. Accordingly, the costs remaining after deducting these fees are those relating primarily to the FPC's rate regulatory responsibilities under Sections 4 and 5 of that Act, the other major area of regulation provided by that Act.

As the court below pointed out (Pet. App. 9a) it has long been settled—and repeatedly reaffirmed by

this Court—that the primary purpose of the FPC's rate responsibilities under the Natural Gas Act is to protect the general public as represented by the ultimate consumers. See *e.g., F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610-611 (1944); *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 137, 147 (1960). Thus, as the FPC recognized (R. 96-97), this Court in *Hope* held that Congress addressed the Natural Gas Act to the "special evils" disclosed by the Federal Trade Commission investigation (320 U.S. at 610); ruled that "the fixing of 'just and reasonable' rates (§ 4) with the powers attendant thereto (fn. omitted) was the heart of the new regulatory system." (*Id.* at 611); and concluded that "those provisions were plainly designed to protect the consumer interests against exploitation at the hand of private natural gas companies" (*Id.* at 612).

Further, it is noteworthy that the general annual charge is not a predetermined fixed amount. Instead, the amount which a pipeline must pay in any given year would vary with the interaction of the four factors set out in the formula contained in Section 159.2a(a) (R. 109, *supra* p. 7): (1) the amount determined by the FPC as the cost in that year of administering its natural gas pipeline programs;[11] (2) the amount collected by the FPC in that year as pipeline certificate filing fees; (3) the sum of the total jurisdictional deliveries of all Class A and B natural gas companies in that year and (4) the total jurisdictional gas deliveries in that year of the particular pipeline being assessed.

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[11] This determination is to be made by the FPC apparently without hearing or participation by the pipelines.

Also, and equally important for present purposes, the annual charge thus to be assessed against a pipeline would be unrelated to any specific or identifiable service performed for, or benefit provided to, that pipeline over and above that provided the public generally. Under the FPC's proposal, a pipeline is required to pay an annual charge as determined under the proposed formula even if during the year involved the pipeline had not filed any application with the FPC; had not sought any benefit or service from the FPC; and had not invoked the FPC's processes in any other way. Indeed, under Order No. 427, a pipeline would be liable for the annual charge even if during the year covered it was not involved in any proceeding or matter, formal or informal, instituted by the FPC, the pipeline or anybody else. In short, all that would be required for a pipeline to be liable for the general annual charge is that it have the status of a Class A or B natural gas pipeline subject to the FPC's jurisdiction under the Natural Gas Act during the year involved.

The general annual charge thus imposed by Section 159.2a under Order No. 427 differs dramatically from the application fees assessed under Sections 159.1 and 159.2 of the FPC's Regulations. For example, Section 159.1 provides:

> "A filing fee of $50 shall accompany each of the following
>
> "(a) Applications for exemption under section 1(c) of the Act;
>
> "(b) Applications to import or export natural gas under section 3 of the Act;
>
> "(c) Applications for permits under Executive Order 10485;

"(d) Applications and petitions to intervene in which applicant or petitioner is requesting an order under section 7(b) of the Act;

"(e) Applications for permission and approval to abandon under section 7(b) of the Act;

"(f) Applications for certificates of public convenience and necessity under sections 7(c) and (e) of the Act;

"(g) Applications for determinations by the Commission under section 5 of the Outer Continental Shelf Lands Act; and

"(h) Amendments to any of the applications listed in paragraphs (a) through (g) of this paragraph and those referred to in § 159.2(c)." [12]

In providing for the payment of a fixed fee or determinable amount of money in connection with the filing of a request for a permit, authorization, sanction or certification, which is within the FPC's jurisdiction to grant under the Natural Gas Act, the fees set out in Sections 159.1 and 159.2 expressly relate to specific requests for FPC action whereby the applicant presumably was seeking a specific benefit or dispensation not otherwise available to it.

B. The Added Reserve Fee

Perhaps the most outstanding and unique feature of the added reserve fee is that it is based on the "new reserves certificated" which reflects the result of the FPC's grant of *applications filed by producers for certificates to sell gas to pipelines for resale.* In these circumstances, if anybody other than the public benefitted from the issuance of these certificates, it obvious-

[12] See, also, Section 159.2, as amended by Order 427 (R. 217-218).

ly would be the producers who applied for them. In this respect, the situation is comparable to fee schedules provided by the Commission in Section 159.1 in connection with pipeline certificate applications where the fee is assessed against the pipeline applicant. Not only is the proposed assessment of the costs of producer certificate regulation upon the pipelines basically inconsistent with the Commission's approach in assessing the costs of pipeline certificate regulation upon the pipelines themselves, but it reaches the incongruous result of imposing the costs incurred in connection with *both* the pipeline *and* producer regulation upon the pipelines.

Moreover, contrary to the Commission allegation the pipelines do not receive "special benefits" from these producer certification activities so as to justify the imposition of the costs of those activities upon pipelines. As pointed out *supra*, p. 17, the Natural Gas Act is designed and intended primarily to benefit the ultimate consumers. In addition, each of the "benefits" allegedly accruing to pipelines as a result of the Commission's producer certificate activities benefit the ultimate consumers as much, if not more, than the pipelines. This is particularly so since under the cost-of-service method used by the Commission in fixing pipeline rates subject to its jurisdiction (*cf. e.g., F.P.C. v. Hope Natural Gas Co., supra*) [13] pipelines are required to pass on such benefits as result, according to the FPC (R. 149), from FPC regulation of "initial prices [the pipelines] are required to pay producers

[13] Pipeline rate regulation is still on an individual company cost of service basis rather than an area rate basis such as that used by the FPC for producers. See *e.g. Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

for gas purchases," and "the elimination of indefinite price escalation provisions."

The alleged benefits also referred to by the FPC as stemming from "the [FPC] issuance of temporary certificates to expedite deliveries, * * * and the [FPC] control over the quality of natural gas to be delivered and the length of the period in which supplies may be delivered where advance payments are made by the pipelines" (R. 149) are also tied in with and are a part of benefits which those FPC activities are intended and designed to provide the ultimate consumers, *i.e.*, to assure that gas will be available to satisfy the requirements of these consumers so that their homes, offices, schools and hospitals, etc. which utilize gas will have the gas they need. *Cf. F.P.C.* v. *Louisiana Power & Light Co.*, 406 U.S. 621 (1972). Whatever benefits result to pipelines from these FPC activities are merely incidental by-products and fall far short of constituting special benefits above and beyond those which apply to the public at large.[14]

II.

THE FPC'S AUTHORITY TO ASSESS FEES DOES NOT EXTEND TO THE IMPOSITION OF EITHER THE GENERAL ANNUAL CHARGE OR THE ADDED RESERVE FEE

As just shown, neither the general annual charge nor the added reserve fee is related to any identifiable special benefits to any specific pipeline, group of pipelines, or the pipeline industry generally. We will now show that the court below properly held that the pow-

[14] This is also true with respect to the "special steps [taken by FPC] to increase the interstate flow of gas during periods of shortage" (FPC Br. pp. 18-19). See *F.P.C.* v. *Louisiana Power & Light Co.*, *supra*.

er vested in the FPC by Title V is limited and does not extend to the imposition of fees and charges such as those here under review. This is not to suggest that Congress may not bestow such authority upon the FPC. To the contrary, as noted by the FPC (R. 2, fn. 1), Section 10(e) of Part I of the Federal Power Act (16 U.S.C. 803(e)) explicitly authorizes it to require a licensee under that Act to "pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose [*inter alia*] of reimbursing the United States for the costs of the administration of this Part; * * *." See also Section 10(f) of the Federal Power Act, 16 U.S.C. 803(f). However, there is no comparable delegation, express or implied, in the Title V or the Natural Gas Act authorizing the FPC to impose the general annual charge or the added reserve fee. Accordingly, as stated by the court below (Pet. App. 10a):

> "In the absence of a clear Congressional mandate to the contrary, we conclude that monies for the administration of programs benefitting the general public should come from the general fund of the treasury. We are well aware of the burgeoning administrative expense of operating the Government, however, only Congress can give authority to levy these fees. It has not done so here."

A. Title V of the 1952 Independent Offices Appropriations Act Does Not Vest the Requisite Authority in the FPC

Putting aside Sections 10(e) and (f) of the Federal Power Act mentioned earlier which obviously do not provide the authorization for the charges here involved, the FPC's only authority to assess fees and charges upon natural-gas companies subject to its jurisdiction under the Natural Gas Act stems basically, as the FPC recognizes (R. 2-3, 92-93), from Title V of

the 1952 Independent Offices Appropriations Act, *supra*, pp. 3-4. Significantly, there is nothing in the Natural Gas Act itself—nor does the FPC now attempt to claim otherwise [15]—with regard to the assessment of fees and charges.

Title V, which applies generally to the various agencies and departments of the Federal Government, provides in pertinent part as follows (see, also *supra* p. 3):

> "It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency * * * to or for any person (including groups, associations, organizations, partnerships, corporations or businesses) * * * shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts * * *."

This provision, we submit, patently was not intended to authorize the Commission to impose the charges here under discussion. Title V on its face permits the assessment of fees and charges only when the following two conditions are met: One, there must be the

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[15] The FPC has apparently abandoned its claim, asserted in the court of appeals, that Section 16 of the National Gas Act, 15 U.S.C. 717o also provided the requisite authority (See Pet. App. 11a-13a).

providing of specific, identifiable benefits, *i.e.*, "any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value or utility" and, two, the thing provided must be to specific identifiable persons or entities, *i.e.*, to "any person (including groups, associations, organizations, partnerships, corporations or businesses") as distinguished from the public or even an entire industry generally.

As stated by the Fifth Circuit in *Clay Broadcasting Corp.* v. *U.S.*, 464 F.2d 1313, 1322, pending on certiorari *sub nom National Cable Television Association, Inc.* v. *U.S.*, Sup. Ct. No. 72-948, (Pet. App. 63a at 79a).

> "* * * the inquiry under 31 U.S.C. 483(a) is not whether the regulated industry likes or agrees with all the regulations prescribed, but whether the members of the industry have benefited in a manner different from the public at large from the regulatory scheme provided by the [FCC]. CATV operators in effect merchandise the broadcast signals which the [FCC] has authorized by its regulation. The scarcity of television outlets which exists under the [FCC's] regulation of the broadcast market structure creates much of the economic value of the distant signal importation by CATV. It is therefore clear that CATV operators do receive benefits of real value from the [FCC's] regulation of CATV and the related broadcast media."

In contrast, neither of these two prerequisites are met by the charges here involved. See *supra*, pp. 16-21. As noted by the court below here (Pet. App. 9a):

> "* * * under the [FPC's] order petitioners would be liable for the annual assessment despite the

> fact that they had no proceedings before the [FPC] for that year. In effect then, the contemplated charges would have no relation to specific services or benefits rendered. * * * Furthermore, the statutory language—'to or for any person'—as well as the Budget Circular require an identifiable recipient. The [FPC's] inadequate response that the identifiable recipient is the whole industry assumes that each company receives a benefit directly proportional to revenue. This assumption is erroneous in that in any given year some companies may require substantial services from the [FPC] while others may neither require nor desire them."

That Congress recognized that Title V was limited in scope and was not intended to vest the various agencies with general authority to assess fees, particularly fees designed to recoup the agency's full costs of operations is indicated by the further language in Title V to the effect that the fees to be assessed thereunder by a particular agency should be such as to make the agency "self-sustaining *to the full extent possible*". In other words, that provision obviously recognized the schedule of fees prescribed by an agency may well fall short of recouping its full costs of operations, thereby implicitly negating the propriety thereunder of charges designed to recover all the costs incurred by an agency in discharging the responsibilities delegated to it by the statute administered by it, regardless of the nature and purpose of these responsibilities.

B. Legislative History

That Title V was not intended to vest the government agencies with comprehensive authority with regard to fees and charges is clear from the pertinent

legislative materials. Thus, these legislative materials demonstrate that Title V was intended merely to provide for fees in certain clear situations, *i.e.*, in situations where there are special benefits to special beneficiaries, with the thought that authority to assess fees and charges for further agency services or activities would be provided by particularized agency legislation sponsored by the committee having responsibility for substantive legislation with respect to that agency. The fact that no such legislation was enacted subsequent to Title V with regard to particularly the Federal Power Commission, serves to demonstrate that that agency's authority to assess fees and charges is limited to fees for special benefits provided to special beneficiaries.

1. Senate Report No. 2120, 81st Cong., 2d Sess.

Although Title V was enacted in the first session of the 82nd Congress, the problem as to the imposition of fees and charges by Federal departments and agencies was not new and was the subject of consideration and study well before that time. For present purposes, it is sufficient, we believe, to begin our review of the legislative consideration of the problem with Report No. 2120 in the second session of the 81st Congress, issued on July 20, 1950 by the Senate Committee on Expenditures in the Executive Departments (now the Senate Committee on Government Operations).

In that report, which bears the caption "Fees for Spcial Services", the Senate Committee sets out its conclusions on "the practicability and propriety of establishing fees for services which the Federal Government renders to special interests" (S. Rep. No.

2120, p. 1). In considering that question, the Committee indicated that its study was directed at:

> "* * * determining the feasibility of offsetting items now necessarily included in the Federal budget as nonreimbursable by transferring the financial burden thereof to the special beneficiaries. *Thus, at the outset, it is desired to draw a clear line of distinction between services which the Federal Government renders, either upon request or by law, to special interests to which benefits thereby accrue at the expense of all the taxpayers, and services for which the Government is inherently liable and the benefits of which accrue to the people at large.*" (*Ibid*)

Thereafter, under the heading of "Conclusions" the Committee stressed the desirability that fee authority be tailored to the different situations of different agencies by "individual acts of Congress drafted by specialists in special fields" (*Id.* at p. 3):

> "* * * there has been no quarrel with the philosophy governing the study that those who receive the benefit of services rendered by the Government especially for them should pay the costs thereof. In the several staff reports and press releases which have been issued, occasion has been taken to reiterate that philosophy and to give reassurance that there is no thought here to establish a system of fees for fundamental Government services, but only to explore the feasibility and fairness of shifting to special beneficiaries the expense now being borne for them by the taxpayers at large.
>
> "At the outset, there had been considered the possibility that this committee itself would cause the drafting and introduction of appropriate general legislation to bring about the desired ends. The study has, however, demonstrated clearly that the field is far too broad to be covered by general

> legislation; it must instead, if practical results are to be obtained, be covered by individual acts of Congress drafted by specialists in special fields. This report should provide a useful guide to the standing committees of the Congress having such jurisdictional authority."

However, the Committee emphasized its view (1) that the costs for special services should be borne by those benefiting specially therefrom, and (2) that where the public benefits jointly with a particular beneficiary, there should be no fee against the special beneficiary unless the "preponderance of benefits" is clearly to him (*Id.* at 3-4):

> "The committee does not herein aline itself either for or against the assessment of fees. Such a decision can prudently be made only after full and exhaustive hearings. There is no doubt, however, that of the 12 agencies included in this study, some render services the benefits of which accrue wholly to special interests which derive therefrom the means of financial success. The committee does incline to the view that, in such instances, the cost to which the Government is put should be borne by the beneficiaries. *Where there is joint benefit to a particular beneficiary and to all of the people, the cost should be equitably divided, and where there is doubt as to the degree or preponderance of benefit, there should be no fee.*"

At this point, it might be helpful to digress by noting the above comment of the Committee answers in large measure the FPC's arguments (1) that while the general public were the primary beneficiary of the FPC's activities covered by the charges here involved, its imposition of these charges nevertheless was appropriate because the pipeline companies also benefitted

from these activities (Br. pp. 21-22) and (2) that "the degree to which the general public might benefit from a particular government service is not cited in Title V as a factor bearing on whether a charge can be assessed against persons who receive special benefit from the service" (Br. p. 22).

Returning to the Senate Committee Report, the Committee then went on to provide "a few illustrative examples * * * for the purpose of demonstrating the line of demarcation * * * which we feel must constitute the guiding philosophy of subsequent legislative or administrative action". Thus, on the one hand, the Committee pointed out (*Id.* at p. 4)

> The Federal Communications Commission renders a tremendous variety of services, a substantial number of which would lend themselves to equitable fees. The Commission processes applications and grants permits for the construction and operation of commercial radio stations. Such an operating permit is in effect a franchise to a segment of the radio audience. The Federal Government sees to it that the right to that audience is not disturbed, and the operator is thus able to insure to purchasers of time over his facilities access to the market addressed. Construction permits constitute the Commission's heaviest workload, involving in an increasing number the necessity of formal hearings so as to provide a sound basis for granting or denying an application. This is a costly process and one which the Government renders without charge. True, the applicant himself may be put to some personal expense in the filing of his application and through attendance at a subsequent hearing, but he does not defray any of the cost to which the general public is put to conduct a proceeding which may assure to the applicant a remunerative business under special Federal protec-

tion. This is an outstanding example of a service for which a fee may most appropriately be assessed.

In contrast, the Committee observed (*Id.* at p. 5):

"On the other hand, the Federal Government is engaged in many costly undertakings which at first glance seem to fall within the category discussed above but which, upon closer examination, are clearly services for which no charge could in propriety be made. Amply illustrative of this category is the meat-inspection service of the Department of Agriculture. Historically, this service was begun by the act of June 30, 1906. At that time, the Congress gave consideration to financing the program through assessments against the meat-packing industry. The idea was abandoned, however, apparently for two major reasons: (1) It was thought that by empowering a Federal agency to assess fees there would be an abdication by the Congress of one of its most important functions; and (2) that if the industry financed the inspection, the service might thereby tend to become discredited. In any event, the Federal meat-inspection service has continued at public expense since inception. * * * This instance is an excellent example of a service rendered by the Government for the good of all the people and serves, too, to emphasize the necessity of preserving a scrupulous line of demarcation between general and special services."

The meat inspection situation in which the Senate Committee regards the imposition of fees as inappropriate parallels closely that here involved. This, together with the Committee's dichotomy between services resulting in special benefits to special beneficiaries and services benefitting the public generally (*supra,*

p. 27), serve to demonstrate the invalidity of the Power Commission's *reductio ad absurdum* argument (Br. p. 21) that rejection of its construction of Title V would constitute "virtual nullification" of that provision. There can be no question that the meat packing industry benefits from such inspection services in the sense that the Power Commission asserts the pipeline industry benefits from its discharge of its responsibilities to the consuming public. In both situations the governmental activity involved operates to provide a context, or as the FPC put it "an economic climate" (R. 97), resulting in a "greater usage of the services" of the companies subject to the regulation. In other words, the confidence in the pipeline industry which the FPC claims resulted from its regulation, also resulted in the meat packing industry from the meat inspection services provided by the Agriculture Department. And, since the Senate Committee cited the meat inspection service by the Agriculture Department as a clear example of a situation where the assessment of a fee to recover the costs of the service provided would be improper, it follows, we submit, that the charges which the FPC seeks to impose to recoup the costs incurred by it in discharging its responsibilities to the ultimate consumers are equally invalid.

One last word with regard to this Senate Committee report. The FPC purports to find support for its position in this Senate report since, as quoted by the FPC, this report also states (Br. p. 24):

> "The Federal Power Commission suggests that the imposition of levies upon the gross revenue of regulated enterprises would be an equitable method of recovery of related costs. [S. Rep. No. 2120, 81st Cong., 2d Sess., p. 12.]"

However, the sentence thus quoted by the FPC is taken out of context, and as a result, gives an erroneous impression. This sentence appears at the end of a paragraph which reads in its entirety as follows:

> "Federal Power Commission
>
> *"The committee recommends consideration of the several licensing functions of this agency.* Fees are now charged pursuant to law to licensees under part 1 of the Federal Power Act. The Commission also issues certificates of public convenience and necessity to natural gas companies under the Natural Gas Act and administers certain regulations under part II of the Federal Power Act. The Federal Power Commission suggests that the imposition of levies upon the gross revenue of regulated enterprises would be an equitable method of recovery of related costs." [S. Rep. No. 2120, 81st Cong., 2d Sess., p. 12]

Read in context, it is apparent (1) that the sentence quoted by the FPC relates to the *form of proposed fee,* not to the *activities for which the fee is to be imposed* and (2) that whatever the FPC recommendation, the Senate Committee itself recommended fees only in connection with special services provided to special identifiable beneficiaries as distinct from the public generally.

2. House Report No. 384, 82nd Cong., 1st Sess.

The views of the House Committee on Appropriations with respect to Title V, which it added as a rider to Independent Offices Appropriation Bill, 1952 are set out in House Report No. 384, 82d Cong., 1st Sess. This report is dated April 27, 1951, and hence followed closely upon S. Rep. No. 2120, just discussed which bears a July, 1950 date.

In its report, the House Committee (at p. 2) expressed its concern "that the Government is not receiving *full return from many of the services which it renders to special beneficiaries.*" In addition, the Committee obviously was aware of Senate Report No. 2120[16] as well as of the activities of other Congressional committees with regard to the assessment of fees since its expressly notes its understanding (at pp. 2-3).

> "* * * that other committees of the Congress have interested themselves in this matter and that studies now are under way which may result in further legislation to require that adequate consideration be received for such services."

However, the Committee went on, "such studies are necessarily time-consuming and the required legislation may not be enacted for a considerable time" (p. 3). Accordingly, the Committee advised (at p. 3) that it

> "* * * has inserted language in the bill (Title V, page 60) which would authorize and encourage the charging or increasing of fees to the extent permitted under present basic laws, but which would in no way conflict with studies now under way to effect changes in such basic laws."

It is thus apparent from the House Committee observations that Title V was intended merely as a stop-gap measure designed to cover the more obvious situations in which it believed the assessment of fees to be appropriate, *i.e.*, situations which clearly involves spe-

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[16] As made clear in the later report of the Senate Committee, a copy of S. 2120 was sent to the respective jurisdictional committees. See S. Rep. No. 1467, 84th Cong., 2d Sess., p. 3.

cial identifiable services for special identifiable beneficiaries. As such, Title V plainly was not designed to cover the entire ambit of possible fees and charges which could be assessed. Instead, the question of the further fees and charges which might be appropriate with regard to particular departments and agencies was left for further legislation sponsored by the appropriate committees.

Similar views on the scope of Title V were expressed by Congressman Yates, a Committee member, on the floor of the House. See 97 Cong. Rec. 4809 (1951). In explaining the thrust of the proposed legislation, Congressman Yates used the Federal Communication Commission as an example *(Ibid):*

> "The Federal Communications Commission grants franchises, licenses, certificates of convenience and necessity, if you will, to all broadcasting stations upon application for such licenses, franchises, and certificates. The Commission undertakes extensive hearings first in connection with a construction permit; secondly on the question as to the allocation of the position of a particular broadcaster in the spectrum of megocycles over which the Federal Communications Commission has control. That is a pretty difficult job and a complicated job, and entails extensive hearings by the Federal Communications Commission. The taxpayers pay every dollar of the charges and of the costs that go into that hearing. The companies pay nothing, other than taxes, and I think it is only fair that in exchange for the franchise that the Government gives the broadcasting company and the protection which the Government affords to such broadcasting company to assure its freedom from interference in the operation of its broadcasting facilities in the particular point of the spectrum

> which it occupies, that it should pay some of the costs of the hearings. It is perfectly proper that the franchised company make a profit, and there has been much profit making. Such companies should assume a greater share of the costs because regulation is necessary."

Also, Congressman Yates made it clear that the Committee did not envision Title V as containing the authorization necessary for the various agencies to recoup their *entire* costs of operations *(Ibid):*

> "Each of the Commissioners who appeared before us was asked his opinion as to whether or not it was feasible to *charge for a portion of the operations of* the agency and in each event the Commissioner thought that it would be practicable. Not only that, one Commissioner expressed the viewpoint that such a practice would not only be feasible but would deter and do away with many superfluous applications. Therefore, the subcommittee in its deliberations decided to put a new legislative section into the bill which would permit each of the agencies to appraise its own operations to see whether or not it would be possible to recapture for the Government *some of the costs* that the Government incurs in connection with this regulation through the establishment of a schedule of fees."

These observations of Congressman Yates thus made it clear that Title V's grant of authority to assess fees and charges permitted such fees only with regard to specific identifiable benefits to specific identifiable beneficiaries, and not to enable the department or agency involved to recover its costs of administration generally from the companies subject to its regulation.

3. Senate Report No. 1467, 84th Cong., 2d Sess.

The enactment of Title V did not put a stop to the legislative concern, studies and hearings with regard to the assessment of fees for services. Much of these post-enactment activities are summarized in S. Rep. No. 1467, 84th Cong., 2d Sess., issued by the Senate Committee on Government Operations (formerly the Committee on Expenditures in the Executive Department) in February 1966.

Although, as pointed out in this report, various of the jurisdictional committees held hearings on legislation which, if enacted, would have vested specific fee authority in particular agencies, no action was taken to enact such legislation. S. Rep. No. 1467, 84th Cong., 2d Sess. at pp. 7-8. In addition, it further noted that several of the regulatory agencies, such as the FCC and the FPC, had suspended action on proposed specific fee schedules at the request of the Senate Committee on Interstate and Foreign Commerce. *Id.* at pp. 9-11, 198, 200, 208, 217.

In the course of discussing this post-Title V fee activity, the Senate Committee made several observations which are highly pertinent on the question now before this Court. Thus, in summarizing the background of the problem, the Committee first discussed its earlier report in S. Rep. No. 2120, *supra*, pp. 26-32. In this connection the Committee noted that it had expressed the view in S. Rep. No. 2120

> "* * * that in establishing a policy, a clear line of distinction should be drawn between services which the Federal Government renders either upon request or by law to *special interests* to which benefits thereby accrue at the expense of all the taxpayers and services for which the Gov-

ernment is inherently liable and the benefits of which accrue to the public at large.

"The report stressed that there was no thought of establishing a system of fees for fundamental Government services but only to explore the feasibility and fairness of shifting to special beneficiaries the expenses being for them by the taxpayers at large * * * *" (p. 3)

Further the Committee emphasized that in S. Rep. No. 2120, it had pointed out

"* * * that—

'There is no doubt that of the 12 agencies included in [the] study, some render services the benefits of which accrue wholly to special interests which derive therefrom the means of financial success.

'The Committee did incline to the view that in such instances, the costs to which the Government is put should be borne by the beneficiary and recommended that—"where there is a joint benefit to the particular beneficiary and to all the people, the cost should be equitably divided and where there is doubt as to the degree or preponderance of benefit there should be no fee." ' " (p. 4)

Later, the Committee discussed Title V. In this regard, the Report first quoted the significant portion of H. Rep. No. 384, *supra*, p. 33, and then reproduced the entire text of Title V preceded by the following summarization (S. Rep. No. 1467 at p. 7):

"The full text of title V of that act, authorizing each Federal agency head to prescribe fair and equitable fees so as to make special services, where appropriate, self-sustaining to the fullest extent possbile and by determining, in case none exists, equitable fees for such services, follows".

Since the Committee then turned to the activities of the Bureau of the Budget and the other Congressional committees on the assessment of fees without any unfavorable amount with respect to Title V, it is apparent, we submit, that the Committee was satisfied that Title V adhered to the views and recommendations expressed in S. Rep. No. 2120 and reiterated in S. Rep. No. 1467. Accordingly, inasmuch as the FPC charges here involved clearly fell outside the area of appropriate fees envisioned by that Committee (see *supra*, pp. 28-31) it follows that the court below properly set aside as beyond the FPC's authority under Title V, the new charges here involved which Order No. 427 undertook to impose upon the pipeline companies.

4. Recent Congressional Observations

In support of its result, the FPC refers to the fact that the Appropriations Committees of Congress have in recent years, been urging the various agencies, such as the FPC, to increase its fees and charges so as to become more self-sustaining (see R. 4, 93). And in this connection, the FPC points out (Br. pp. 24-25, fn. 16) that it has been "commended" in 1971 by the Chairman of the Public Works Subcommittee of the House Appropriations Committee "for promulgating the fee schedule under review."

But it is, of course, well settled that

> "* * * the views of one Congress as to the construction of a statute adopted many years before by another Congress has very little, if any, significance. *Rainwater* v. *United States*, 356 U.S. 590, 593; *United States* v. *Price*, 361 U.S. 304, 313; *Haynes* v. *United States*, 390 U.S. 85, 87,

n. 4." (*U.S.* v. *Southwestern Cable Co.*, 392 U.S. 157, 170 (1968)).

Here, there is a lapse of at least twenty years between the enactment of Title V and the "commendation" thus relied on by the FPC. Consequently, if the FPC intends to imply from these references that the Appropriations Committee of Congress now read Title V as vesting authority in the FPC to assess fees such as the charges here involved, the implication is patently without substance.

Thus, the "commendation" related to the monies to be collected by the proposed fees, not the basis on which the fees are assessed. In other words, the Chairman was pleased with the amount which the FPC indicated would be collected under its proposed fee schedule. The Chairman, however, made no reference or comment with regard to activities for which the FPC intended to assess the proposed fees.

This omission is particularly significant since despite such urgings and commendations, the Appropriations Committee not only expressly recognized that the fee authority provided in Title V extended only to the charging of fees in connection with providing of special benefits to special identifiable recipients above and beyond those accruing to the public at large, but have made no attempt to enlarge upon the fee authority thus vested in the agencies by Title V. Thus, in its report on the 1969 Independent Offices and Department of Housing and Urban Development Appropriations bill, the House Appropriations Committee summarized Title V as

"* * * providing for the collection of fees by the Federal government for services rendered. It

> authorizes each agency head to prescribe *a fee or charge for benefits, privileges, authority, use and other things of value* which is determined to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served." (H. Rep. No. 1348, 90th Cong., 1st Sess., p. 4)."

Further noting that "[a] number of agencies provided for in this bill collect fees or charges for licenses or services rendered," the Committee went on to express its

> "concern that *the Federal government is not receiving sufficient return for all the services which it renders to special beneficiaries. This is particularly noteworthy with respect to the value to the recipient of certificates franchises and operating permits.* For instance, the license fees paid in the multibillion dollar radio and television industry are negligible in comparison to the value of these franchises. Other operating rights granted by agencies and commissions of Government have substantial values to the recipients. Accordingly, the Committee recommends that the applicable agencies review their schedule of fees and charges with a view to making increases or adjustments as may be warranted, taking into consideration *beneficial certificates and privileges granted,* to offset in part the increasing needs for direct appropriations for operating costs of the agencies concerned." *(Ibid.)*

To the same effect is the report of the Senate Appropriations Committee on this bill (S. Rep. No. 1375, 90th Cong., 1st Sess., p. 3):

> "The committee joins with the House committee in its concern that the Federal Government is not receiving sufficient return for all the services which it renders *to special beneficiaries,* and in its recommendation that the applicable agencies

review their schedule of fees and charges with a view to making increases or adjustments as may be warranted, taking into consideration *beneficial certificates and privileges granted,* to offset in part the increasing needs for direct appropriations for operating costs of the agencies concerned."

The references in these Committee reports to "services * * * rendered to special beneficiaries" and to "beneficial certificates and privileges granted" evidence the understanding of these Committees that, as we have been urging throughout this brief, Title V authorizes the assessment of fees only in connection with applications for specific and special benefits to the applicants above and beyond those which accrue to the public generally. As so limited, the Title V fee authority does not extend to the imposition of the charges here involved.

Consequently, if the construction of a statute by a Congress 20 years after its enactment were significant, it is apparent that such constructon adds further support to the reading of Title V by the court below rather than the construction being urged by FPC.

C. Administrative Construction

The administrative construction of Title V has similarly recognized that the fees authorized thereunder must be only for the providing of specific identifiable benefits to specific identifiable beneficiaries as distinct from the public generally.

1. Bureau of Budget Circular A-25

Pursuant to Title V's directive of assuring that the fees assessed by the various Government agencies "be as uniform as practicable and subject to such policies

as the President may prescribe" (see *supra* p. 3), the Bureau of the Budget promulgated its Circular A-25 in its present form on September 23, 1959.[17] As the Commission recognizes, that Circular "sets forth for agency action the scope of user charges activities, [and] guidelines for carrying out the policies prescribed therein." (R. 4, fn. 2; see also R. 201).

Of particular relevance here are the following provisions of Circular A-25 (See also *infra* pp. 55-56):

> "3. *General policy.* A reasonable charge, as described below, should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit.
>
> "a. *Special services.*
>
> "(1) Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service. For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:
>
> "(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop

[17] Circular A-25 was first issued on November 25, 1953 and revised on November 13, 1957.

insurance, or a license to carry on a specific business); or

"(b) Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes, or safety inspections of craft); or

"(c) Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving a passport, visa, airman's certificate, or an inspection after regular duty hours).

"(2) No charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public (e.g., licensing of new biological products)."

The charges here under review run counter to Circular A-25 in at least two obvious respects. In the first place, they do not fit within paragraph 3's criteria for imposing charges. Plainly, as pointed out by the court below (Pet. App. 9a) these charges are not "to [an] identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit." This is particularly so since, as shown *supra*, pp. 16-17, 20-21 the regulation provided by the Natural Gas Act does not "provide special benefits" to any pipeline individual-

ly or the pipeline industry generally above and beyond those which accrue to the public at large.

In the second place, the assessment of these costs violates subparagraph (2)'s prohibition against the charging for services "when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public." This prohibition is especially relevant here, since, as pointed out earlier, Congress has authorized the expenditure of the funds representing the costs of pipeline regulation to benefit the ultimate consumers. Consequently, to the extent that any ultimate beneficiaries of such regulation are identifiable, they consist of the ultimate consumers of the gas. This is in line with the Supreme Court's repeated holdings, noted earlier, that the primary purpose of the Natural Gas Act is to protect the consuming public against excessive rates by natural gas companies.

Consequently, the costs incurred by the FPC in connection with its rate regulation activities fall squarely within the observation of the Senate Committee on Government Operations (formerly the Senate Committee on Expenditures in the Executive Departments) in S. Rep. No. 2120, *supra* at pp. 27-28, and S. Rep. No. 1467 *supra,* pp. 36-37, as well as that in the separate statement herein by Commissioner Carver (R. 113), that:

> "As a basic philosophical premise, I do not believe that general governmental functions, unrelated to special services or privileges extended by the sovereign, should be made self-sustaining through levies upon particular persons or industries. Regulation in the public interest is conducted for the benefit of the general public; it

> ought to be financed out of the general fund of the Treasury is the same manner as other governmental functions." See also *supra,* pp. 9-10, Pet. App. 9a-10a.

The FPC claims (Br. pp. 16-17, see also R. 97-98) that the general annual charge comes within the criteria of Circular A-25 because the charge relates to the costs incurred in discharging its "responsibilities in preventing the imposition of rates and charges which are unjust and unreasonable or preferential and prejudicial" and although such regulation "has provided continuing benefits to consumers," it has also

> "redounded to the benefit of [the natural gas] industr[y] by creating the economic climate for greater usage of the services of the regulated companies which in turn have further strengthened their financial stability and their ability to sell debt and equity securities required for capital additions to meet ever-increasing demands."

But, as pointed out *supra,* pp. 27 and 36 the Senate Committee on Government Operations explicitly recommended against the imposition of a fee "[w]here there is a joint benefit to a particular beneficiary and to all the people * * * and where there is doubt as to the degree or preponderance of benefit." Moreover, such an alleged "economic climate" obviously does not constitute a "special service" within the criteria of Circular A-25. To be sure, as the FPC urges (Br. p. 17) Circular A-25 refers to "business stability", but it is in the context of specific agency actions directed to identifiable beneficiaries "(e.g., certificates of necessity and convenience for airline routes or safety inspection of craft)"

(See Pet. App. 61a-62a). Order No. 427 here involved also contains a schedule of fees to be paid in connection with requests for comparable FPC actions (*i.e.*, applications for certification of public convenience and necessity under the Act) and there is no question here as to the validity of these fees.

In contrast, as noted *supra* pp. 30-31, the alleged beneficial "economic climate"[18] is no different for the beneficial results of the meat inspection service provided by the Agriculture Department and which the Senate Committee on Government Operations utilized to illustrate the type of situations in which the imposition of fees would be unwarranted. In any case, such alleged beneficial "economic climate" is not the result of specific actions taken by the FPC with that objective in mind as contemplated by Circular A-25. Rather, that "climate" at best came about as the culmination of the FPC's activities over a period of years and resulted from the reaction of the financial community to the FPC's discharge generally of the responsibilities imposed on it by the Congress. Moreover, even if FPC rate regulation has been beneficial to the pipelines individually or the natural gas pipeline industry generally, they have not been "special", or even the primary, beneficiaries of that regulation. In light of the primary thrust of the statute, any benefits to the natural-gas pipelines would at most be incidental by-products, or intermediate steps on the FPC's way to the discharge of its responsibilities to the consuming public.

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[18] The finding of such beneficial "economic climate" is itself questionable since it is based solely upon a report issued by the FPC in 1950, more than 20 years ago (See Pet. App. 30a-31a, fn. 5).

Similarly, no special benefits resulted to the pipeline industry justifying the FPC's assessment of the added reserve fee. To the contrary, each of the "benefits" allegedly accruing to the pipelines individually or the pipeline industry generally as a result of the FPC's producer certificate activities is in fact intended to benefit the consuming public rather than the pipeline industry. See *supra,* pp. 19-21.

2. Federal Power Commission

Prior to the FPC's issuance of Order No. 427, the FPC had recognized at least on one occasion that Title V did not vest authority in it to impose the type of charges here under review. Thus, as noted *supra,* pp. 8, 14, in connection with its earlier fee fixing proceeding in Docket No. R-282, the FPC expressed the opinion that

> "* * * the assessment of user charges or other fees with respect to the exercise of our regulatory activities under Parts II and III of the Federal Power Act and under the generally parallel rate and accounting provisions of the Natural Gas Act would not be appropriate *since these activities are primarily for the benefit of the general public rather than the regulated companies.*"

The FPC (Br. p. 22, fn. 15) now attempts to brush off its statement in Docket No. R-282 as constituting a matter of FPC regulatory policy which, under established principles, it has ample authority to change. But, whether or not the FPC has the authority to make such assesments under Title V is not a matter of FPC policy. Nor is it a matter of interpretation of a statute, the administration of which has been delegated to the FPC. Rather, as discussed in detail elsewhere herein, it is a question of the scope and thrust

of Title V of the 1952 Appropriations Act and Bureau of the Budget Circular A-25 and since these apply to all agencies and not just the FPC, it is apparent that the interpretation of these writings are not matters as to which the Commission has special expertise, as to which its interpretation is entitled to special deference, or as to which the Commission is free to change its interpretation as a matter of policy.

3. Federal Communications Commission

The Federal Communications Commission first adopted rules providing for a schedule of fees in 1963. 28 Fed. Reg. 4658, 10911 (1963). That schedule was subjected to judicial review in *Aeronautical Radio Inc.* v. *U.S.*, 335 F.2d 314 (7th Cir. 1964), *cert. denied*, 379 U.S. 960 (1965). As summarized by the Seventh Circuit, the *Aeronautical* case involved a schedule promulgated by the Communications Commission "prescribing fees for applications for licenses to use the public air waves for radio purposes" (335 F.2d at 306). As further noted by that court (*Id.* at 308), that schedule

> "* * * was broken down into three categories: Broadcast Services, including AM, FM, and television broadcast stations with fees for new stations ranging from $50.00 to $100.00[6] Safety and Special Radio Services, including non-broadcast users of radios—other than common carriers, amateur aviation, marine and citizens—with application fees ranging from $4.00 to $30.00;[7] and

"[6] The fee for a three year television license is $100.00; for a radio license (AM and FM), $50.

"[7] The fee for a five year amateur radio license is $4; in the Citizens Radio Service, $10 and $8; for Fixed Microwave Radio Stations, $30.

Common Carrier Services, with fees ranging from $5.00 to $100.00.[8] There were several exclusions from the schedule, such as police, fire and other governmental users of radio; users on a non-profit basis essentially for public health, safety and welfare; and educational, hospital, disaster relief organizations and like users."

[8] The fee, for example, for Mobile Radio Service Base Stations is $100; and for a five year license in the Aviation Services, $10."

Since the FCC has no jurisdiction over the rates charged by radio and TV licensees, the fees involved in *Aeronautical* did not relate to matters as to which the FCC exercised rate jurisdiction, much less were they directed to the recoupment of the costs of rate regulation by the FCC. Moreover, the fees involved in that case were to be paid in connection with requests by specific and identifiable applicants for special services or authorizations of special value to the applicants. Indeed, the great value of the radio and television licensees has been among the primary reasons advanced in support both of the enactment of Title V in 1951. See *supra* pp. 34-35.[9]

[9] The FPC (R. 202) also relied on the *Aeronautical* case as support for its claim that the fee to be charged for a particular service need not be supported by detailed cost records and could be fixed on the basis of average costs. Whatever the validity of that claim as an abstract proposition, it has no applicability to the annual charge here involved. Not only is there no relationship between the charge assessed against a particular pipeline and any specific service or benefit provided to that company, but, as pointed out, *supra* p. 18, each Class A or B pipeline is required to pay the general annual charge even though it has not been involved in any rate proceeding or matter before the Commission during the period involved. Obviously, the imposition of an annual charge in these circumstances does not involve averaging in the sense used in the *Aeronautical* case.

Likewise, in response to the urgings of the Congressional Appropriation Committees, the FCC has recently undertaken a revision of its fees and charges. See Amendment of Subpart G of Part 1 of the FCC's Rules Relating to the Schedule of Fees, FCC Docket No. 18802, 23 F.C.C. 2d 880 (1970); 28 F.C.C. 2d 139 (1971). The fees imposed in these proceedings with respect to CATV is the subpect of the litigation in *Clay Broadcasting Corporation* v. *F.C.C.* 464 F2d 1313 (5th Cir. 1972), pending on certiorari, *sub nom, National Cable Television Association Inc.* v. *U.S.*, Sup. Ct. No. 72-948.

In connection with this schedule of FCC fees, including particularly those relating to CATV, it should be noted that the FCC did not undertake to impose any charges to recoup any costs of rate regulation. Thus, the FCC annual charges involved in *National Cable* are unrelated to any rate regulatory responsibilities the FCC may have under the Federal Communications Act. Indeed, since CATV is not "common carrier" under Title II of the Communications Act. (*U.S.* v. *Southwestern Cable Co.*, 392 U.S. 157, 172 (1968)), CATV operators apparently are "free to set their own advertising rates" *Cf. U.S.* v. *RCA*, 358 U.S. 334, 349 (1959).

Further, both the FCC and the Fifth Circuit recognized that Title V required special identifiable benefits to special beneficiaries. See *e.g.*, 23 FCC 2d at 890, 897-898, 28 FCC 2d at 142-143, 150-151; 464 F.2d at 1322. Thus, one of the primary purposes of FCC regulation of broadcasting and CATV activities appears to be to allocate the limited air waves and broadcast spectrum among its various users and to protect them from interference by others. See, *e.g.*,

U.S. v. *Southwestern Cable Co.*, 392 U.S. 157, (1968); *U.S.* v. *Midwest Video Corp.*, 406 U.S. 649 (1972). As the Fifth Circuit specifically noted in upholding the validity of the annual fee imposed by the FCC upon the CATV operators, (464 F.2d at 1322):

> "It seems apparent to this court that under the Commission's regulatory scheme which existed from the time of the adoption of these fees until the present, CATV operators have received 'valuable benefits' sufficient to justify the imposition of the annual fee. Although the Commission does not issue licenses for CATV systems as it does for broadcast stations, CATV operators have directly benefited from the Commission's various regulations designed to keep entry into the industry open. (fn. omitted) The Commission has also proposed rules limiting the amount of franchise fees which local governments could charge cable operators. (fn. omitted). Indeed, as the Commission points out, the entire regulation of cable television is undergoing radical change, much of which clearly inures to the benefit of cable operators. (fn. omitted)
>
> "CATV operators in effect merchandise the broadcast signals which the Commission has authorized by its regulation. The scarcity of television outlets which exists under the Commission's regulation of the broadcast market structure creates much of the economic value of the distant signal importation by CATV. It is therefore clear the CATV operators do receive benefits of real value from the Commission's regulation of CATV and the related broadcast media."

Hence, since petitioner in that case basically is questioning not the thrust of Title V, but rather whether the members of the CATV industry received the requisite benefits justifying the imposition of the

fees assessed by the FCC (See Br. for Petitioner in No. 72-948, pp. 11-13), it is apparent that the views expressed by the Fifth Circuit and the parties in that proceeding are in no way inconsistent with the result reached by the court of appeals here.

4. Interstate Commerce Commission

The ICC has carefully avoided the imposition of any fees designed to recover generally the costs incurred by it in connection with its general rate regulation activities. Thus, in prescribing a schedule of fees in *Ex Parte No.* 246, "Regulations Governing Fees for Service Performed in Connection with Licensing and Related Activities," 326 I.C.C. 573 (1966), the ICC went out of its way to point out that the proposed fee schedule was limited to "our activities involving applications seeking certificates, permits, special permissions and other similar authorizations." (326 I.C.C. at 573). Further pointing out that the *Aeronautical* case "had the effect of approving a schedule of fees established by the FCC for filing applications for licenses, permits and benefits which have many characteristics in common with applications and similar matters being dealt with here," the ICC stressed that although it was proposing to charge certain fees in connection with the filing of tariffs, these fees had nothing to do with "normal tariff publishing activities" and was applicable "only [in] those instances where our specific approval is necessary to override a statutory requirement or an agency rule of general applicability." (*Id.* at 581).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should affirm the judgment of the Court of Appeals for the District of Columbia Circuit setting aside FPC Order No. 427 with respect to the imposition of a general annual charge and an added reserve fee upon natural gas pipeline companies subject to FPC regulation under the Natural Gas Act.

Respectfully submitted,

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September 19, 1973

APPENDIX

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D. C.

September 23, 1959 — CIRCULAR No. A-25

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: User Charges

1. *Purpose.* Bureau of the Budget Bulletin No. 58-3 of November 13, 1957, set forth some general policies for developing an equitable and uniform system of charges for certain Government services and property. This Circular incorporates the policies contained in that Bulletin and gives further information with respect to: (a) the scope of user charge activities; (b) guidelines for carrying out the approved policies; and (c) agency submission of periodic status reports. It also prescribes Standard Form No. 4 on which periodic status reports are required.

Because this Circular applies also to the areas previously covered by Bureau of the Budget Circular No. A-28 of January 23, 1954, that Circular is hereby rescinded.

2. *Coverage.* Except for exclusions specifically made hereafter, the provisions of this Circular cover all Federal activities which convey special benefits to recipients above and beyond those accruing to the public at large. The specific exclusions which continue to be governed by separate policies are fringe benefits for military personnel and civilian employees; sale or disposal under approved programs of surplus property; postal rates; interest rates; and fee aspects of certain water resources projects (power, flood control, and irrigation). In addition this Circular does not apply to activities of the legislative and judicial branches, the municipal government of the District of Columbia, the Panama Canal Company or the Canal Zone Government.

3. *General policy.* A reasonable charge, as described below, should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit.

a. *Special services.*

(1) Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service. For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop insurance, or a license to carry on a specific business); or

(b) Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes, or safety inspections of craft); or

(c) Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving a passport, visa, airman's certificate, or an inspection after regular duty hours).

(2) No charge should be made for services when the identification of the ultimate beneficiary is ob-

secure and the service can be primarily considered as benefitting broadly the general public (e.g., licensing of new biological products).

b. *Lease or sale.* Where federally owned resources or property are leased or sold, a fair market value should be obtained. Charges are to be determined by the application of sound business management principles, and so far as practicable and feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.

4. *Agency responsibility.* The responsibility for the initiation, development, and adoption of schedules of charges and fees consistent with the policies in this Circular continues to rest with the agency. Each agency shall:

a. Identify the services or activities covered by this Circular;

b. Determine the extent of the special benefits provided;

c. Apply accepted cost accounting principles in determining costs;

d. Establish the charges; and

e. In determining the charges for the lease and sale of Government-owned resources or property, apply sound business management principles and comparable commercial practices.

5. *Cost, fees and receipts, and their determination.*

a. *Determination of costs.* Costs shall be determined or estimated from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose. The cost computation shall cover the direct and indirect costs to

the Government of carrying out the activity, including but not limited to:

(1) Salaries, employee leave, travel expense, rent, cost of fee collection, postage, maintenance, operation and depreciation of buildings and equipment, and personnel costs other than direct salaries (e.g., retirement and employee insurance);

(2) A proportionate share of the agency's management and supervisory costs;

(3) A proportionate share of military pay and allowances, where applicable;

(4) The costs of enforcement, research, establishing standards, and regulation, to the extent they are determined by the agency head to be properly chargeable to the activity.

b. *Establishment of fees to recover costs.* Each agency shall establish fees in accordance with the policies and procedures herein set forth. The provisions of this Circular, however, are not to be construed in such a way as to reduce or eliminate fees and charges in effect on the date of its issuance. The maximum fee for a special service will be governed by its total cost and not by the value of the service to the recipient. The cost of providing the service shall be reviewed every year and the fees adjusted as necessary. In establishing new fees and increasing existing fees the agency may make exceptions to the general policy (paragraph 3, above) under such conditions as illustrated below.

(1) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

(2) The furnishing of the service without charge is an appropriate courtesy to a foreign country or

international organization; or comparable fees are set on a reciprocal basis with a foreign country.

(3) The recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare.

(4) Payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program.

c. *Disposition of receipts.* Legislative proposals shall generally avoid disturbing the present rule that collections go into the general fund of the Treasury as miscellaneous receipts. However, execptions may be made where:

(1) It is intended that an agency or program or a specifically identifiable part of a program be operated on a substantially self-sustaining basis from receipts for services performed or from the sale of products or use of Government-owned resources or property.

(2) The agency can show that the initiation or increase of fees or charges is not feasible without earmarking of receipts.

(3) The receipts are in payment of the cost of authorized special benefits for which the demand is irregular or unpredictable, such as inspections performed upon request outside the regular duty hours.

This Circular is not intended to change the present system of sharing with States and counties receipts from the lease of certain lands and the sale of certain resources.

6. *Changes in existing law.* In cases where collection of fee and charges for services or property in accordance

with this Circular is limited or restricted by provisions of existing law, the agencies concerned will submit appropriate remedial legislative proposals to the Bureau of the Budget under the established clearance procedure, as provided in Bureau of the Budget Circular No. A-19.

7. *New activities.* In the establishment of new Federal activities which would provide special benefits, the agencies concerned are to apply the policies and criteria set forth in this Circular.

8. *Reports to the Bureau of the Budget.* Each agency shall make a report by December 31, 1959, for each bureau or comparable organizational unit, of the costs and charges for all services or property covered by this Circular, and shall also make a report of changes not later than December 31 of each succeeding year as a result of its annual review of such costs and charges. The initial report for any new agency hereafter established (including those established by reorganization) shall be submitted on December 31 following the end of the first fiscal year during which the agency was in operation. Each report shall cover the situation as of the preceding June 30, and shall be prepared in accordance with the instructions set forth in the attachments to this Circular.

By direction of the President:

MAURICE H. STANS
Director

Attachments